

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 98-0597
Gross Income Tax
Calendar Year 12/31/96

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ISSUE(S)

I. Gross Income Tax – Commission Income

Authority: IC 6-2.1-1-10; 45 IAC 1-1-8; 45 IAC 1-1-17; 45 IAC 1-1-96

Taxpayer protests the inclusion of commissions from rental receipts from a third party in its gross income.

STATEMENT OF FACTS

Taxpayer operates retail stores and through direct mail. An affiliate, A, included in the taxpayer's consolidated return is a retailer that sells from stores. Affiliate B that performs systems consulting is also included in the consolidated return. Taxpayer and affiliate A operate retail stores within the state. Taxpayer filed an Indiana return that includes affiliates A and B. Upon audit it was discovered that the taxpayer failed to include high rate receipts from income from retailers who occupy space and sell their goods in affiliate A's stores. Taxpayer protests and states that these sales are not subject to tax as it was a licensing arrangement totally dependent on sales and if no retail sales were made, no remittance was required to be made to affiliate A. Taxpayer states the retailers conducted business independently of affiliate A by selling their own product, collecting their own sales tax and preparing their own Indiana sales and income tax returns. Taxpayer further states the Indiana auditor is attempting to tax income that has previously been taxed by the State of Indiana and the Indiana gross income tax liability on these retail sales rest with the third party retailers and their inclusion in Affiliate A's Indiana income tax return would result in the double taxation of these receipts. Affiliate A opened Indiana retail stores in 1994 and 1995. In exchange for the use of space at its retail locations, two companies were to remit a percentage of their retail sales to affiliate A.

I. Gross Income Tax – Commission income

DISCUSSION

At issue is whether income received from a third party is subject to gross income tax. Taxpayer states that the Indiana gross income tax liability on these retail sales rest with the third party retailers and their inclusion in affiliate A's Indiana Income tax return would result in the double taxation of these receipts.

Taxpayer receives rent income from retailers who occupy space and sell their goods in affiliate A's stores in Indiana. At hearing, taxpayer states that the retailers pay a percentage of their sales to affiliate A. That income is already included on line 10 of the Federal return.

IC 6-2.1-1-10 states:

“Receipts”, as applied to a taxpayer, means the gross income in cash, notes, credits, or other property that is received by the taxpayer or a third party for the taxpayer's benefit.

45 IAC 1-1-17 further states:

“Gross income” and “gross receipts” mean the entire amount of gross income received by a taxpayer. This includes all income actually or constructively received, i.e., monies credited to the taxpayer by his creditors, or paid to his creditors on his behalf by a third party.

45 IAC 1-1-28 defines rental income as follows:

Rental income is any payment, in cash or other form, for the possession or use of real or tangible personal property for a limited period of time. the gross receipts, without any deductions, derived from the lease or rental of real or tangible personal property, whether actually or constructively received, are taxable at the higher rate under IC 6-2-1-3(g).

The Indiana Code and Regulations clearly allow the department to tax rental and/or commission receipts at the high rate of tax.

Taxpayer further believes the department is taxing it twice, once in Gross Income and again in Adjusted Gross Income.

As can be seen from the audit and the IT-20 tax returns, taxpayer is taxed at the higher of gross income tax or adjusted gross income tax, therefore, no double taxation has incurred.

FINDING

Taxpayer's protest is denied.

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